

# Cox Padmore Skolnik & Shakarchy LLP

Attorneys at Law

Ralph N. Gaboury, Esq.  
Of Counsel  
Also admitted in  
Massachusetts and Rhode Island

February 7, 2022

**Via ECF Filing**

Hon. Lewis J. Liman, U.S.D.J.  
United States District Court  
for the Southern District of New York  
500 Pearl Street, Room 701  
New York, NY 10007

**Re: Green Star Energy Solutions, LLC v. Edison Properties, LLC *et al***  
**(SDNY 1:21-cv-02682-LJL)**

**Request to Direct Clerk to Remove Deficiency Notice on**  
**Plaintiffs' Second Amended Complaint**

Dear Judge Liman:

This firm represents plaintiff Green Star Energy Solutions, LLC ("Plaintiff") in the above-referenced matter. On February 3, 2022, Plaintiff filed its Second Amended Complaint (Doc No. [47](#)). Plaintiffs made this filing pursuant to Fed. R. Civ. P. 15(a)(1)(B), Rule 3(C) of Your Honor's Individual Practices in Civil Cases, and pursuant to the briefing schedule on the motions to dismiss Your Honor so ordered on October 18, 2021 (text only order Doc No. 37). Rule 3(C) of Your Honor's Individual Practices states that (emphasis added):

**Amendment as of right is permitted pursuant to Federal Rule of Civil Procedure 15(a)(1)(B). If the plaintiff amends its pleading, absent objection by a defendant, the Court will deny the motion to dismiss, as moot, without prior notice to the parties.** The moving party may then (a) file an answer, (b) file a new motion to dismiss, or (c) submit a letter-motion stating that it relies on the initially-filed motion to dismiss. In the event of (c), the Court will treat the initially-filed motion to dismiss as a new motion to dismiss the amended pleading.

However, on February 4, 2022, the Clerk of the Court issued a deficiency error notice as to Plaintiff's filing of the Second Amended Complaint, citing "FRCP Rule 15 Non-Compliance." The undersigned counsel for Plaintiff called the Clerk's office and was informed that any filing of an amended complaint beyond the First Amended Complaint must be preceded by or include as an attachment either the specific leave of the Court to make the filing or the opposing parties' written consent – despite the Court's so ordered briefing schedule on the motions to dismiss and the Court's above-referenced individual practice rule.

630 Third Avenue 23rd Floor New York, NY 10017-6735 212-953-6633 212-949-6943 (Telefax)  
[www.cpsslaw.com](http://www.cpsslaw.com)

---

A Partnership including Limited Liability Partnerships

Denver  
303-839-9191

Great Neck  
516-829-1080

Hackensack  
201-489-0050

Hon. Lewis J. Liman, U.S.D.J.  
United States District Court for the Southern District of New York  
February 7, 2022  
Page 2

Cox Padmore Skolnik  
& Shakarchy LLP  
Attorneys at Law

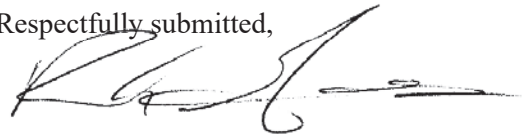
Given that Plaintiff's First Amended Complaint was filed with the written consent of both Defendants (see Doc No. [36](#))<sup>i</sup> it is Plaintiff's position, pursuant to Fed. R. Civ. P. 15(a)(1)(B), Rule 3(C) of Your Honor's Individual Practices and the briefing schedule so ordered by the Court on the motions to dismiss (Doc No. 37), that Plaintiff was permitted to file its Second Amended Complaint on February 3, 2022.

Accordingly, Plaintiff respectfully requests that the Court instruct the Clerk to accept Plaintiff's filed Second Amended Complaint (Doc No. 47) and to remove the deficiency notice currently posted to the electronic docket for this filing.

Counsel for Plaintiff contacted counsel for both of the defendants in connection with this request, but was unable to get a response in time for our application.

Thank you for your attention to this matter.

Respectfully submitted,



Ralph N. Gaboury

cc: Rebecca Kinburn, Esq. (via ECF)  
Gregory Tuttle, Esq. (via ECF)

---

<sup>i</sup> The First Amended Complaint was filed essentially as a "clean up" of the Complaint following this Court's transfer of certain claims to the District of New Jersey (see Doc No. [34](#)).

Treating Plaintiff's letter as a motion to amend pursuant to Federal Rule of Civil Procedure 15, the motion is granted, and Plaintiff is permitted to file an amended complaint on or about February 11, 2022. Under Rule 15, the Court is to grant leave to amend "when justice so requires." The case is at its incipency, there is no evidence of undue delay or improper purpose, and Defendants have articulated no prejudice. Defendants' motions to dismiss are denied as moot. Defendants may renew their motions to dismiss as against the amended complaint or may answer following the procedures set forth in the Court's Individual Practices in Civil Cases.

The Clerk of Court is respectfully directed to close Dkt. Nos. 42 and 43.

SO ORDERED.



LEWIS J. LIMAN  
United States District Judge

2/10/2022